NCIGF Position Statement on Restructuring
Adopted by NCIGF Board October 1, 2019

Background. Efforts in states to enact restructuring statutes are progressing quickly. To date, eight states have enacted a restructuring statute in some form. These statutes permit an ongoing insurance company to divest itself of certain liabilities, along with a calculated amount of corresponding assets, **and relinquish any ongoing responsibility for the divested business**. This can be accomplished by a division, in which the dividing entity may or may not survive, and in which resulting companies are created, or an IBT, described in Oklahoma as a transaction that would "transfer insurance obligations or risks, or both, of existing or in-force contracts of insurance or reinsurance from a transferring insurer to an assuming insurer."

IBT's (like Oklahoma) and division statutes (like Illinois) are very different types of transactions. An IBT is intended to accomplish an assumption transaction by a "statutory" novation effectuated by operation of law (e.g., by court order), rather than by a novation that requires individual policyholder consent. (We believe that a number of GA laws already have language that may cover certain assumptions, but a complete analysis of GA laws as they will be applied to an IBT is still needed.)

In either case, the business divested would be put into a different insurance company or companies. In some states the business could be put into a protected cell. The statutes proposed typically call for a divestment plan to be filed with and approved by the state's commissioner of insurance. Sometimes review and approval by the court is also required. Requirements for notice to policyholders and public hearings on the proposals vary from state to state. The most recent proposals do not limit the lines of business that can be subject to divisions. Hence, all types of insurance such as personal lines, workers compensation and long-term care insurance could be involved.

The NCIGF supports member guaranty funds in meeting immediate and future obligations to policyholders. The NCIGF does not take a position on any current or contemplated industry business practice.

NCIGF public policy is focused on preserving guaranty fund (GF) coverage for policies and claimants where there has been a division or an IBT:

- Where there was guaranty fund coverage before the division or IBT, state regulators should ensure that there is coverage after the division or IBT. A division or IBT should not reduce, eliminate or in any way impact GF coverage.
- Where there was no coverage before the division or IBT, there should be no coverage after the transactions are completed. A division or IBT should not create, expand, or in any way impact GF coverage.
- Guaranty fund representatives are a good resource for any guaranty fund coverage issues that arise in evaluating these transactions.

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NCIGF observes that insurance company divisions and IBTs that are reviewed and approved by state regulators may impact potential guaranty fund coverage for policyholders. Existing P & C guaranty fund laws were generally not drafted with the division or IBT concepts in mind. Because of how some of the definitions in the guaranty fund laws were drafted, and because of how the division and IBT legislation operates, it is quite possible that some policyholders that now have guaranty fund coverage might no longer have that coverage if their policies are moved as a result of a division or IBT.

Possible technical gaps may be created if a state has adopted the NAIC P&C Guaranty Association Model Law. These gaps could include the definitions of Covered Claim, Member Insurer, Insolvent Insurer, and the Assumed Claims Transaction found in Section 5 of the P&C Guaranty Association Model Law.

Again, where the original company was a member of one or more guaranty funds and potential claimants and policyholders had been covered by a guaranty fund prior to the transaction, care should be taken to make sure that those same claimants and policyholders are covered by a guaranty fund after the transaction. This may require guaranty fund laws and/or other insurance laws to be amended in each of the states where the original company was a member of a guaranty fund before the transaction becomes final.

Although this is a developing issue, restructuring statutes as described above are part of the existing insurance landscape. Currently, the best course of action is for the guaranty fund system to work with industry, state and national trades, and regulators to resolve the guaranty fund coverage issues in a tailored fashion, taking account of variances in state laws and restructuring statutes that may come in to play.

In order to facilitate the needed amendments of the guaranty fund laws and or other insurance laws across the country that will be required to implement this policy, the NCIGF Board directs the Public Policy Committee to appoint a subcommittee to work with NCIGF members, industry, trade associations (national and local) regulators and other interested stakeholders to oversee a coordinated, national effort to enact the necessary changes in each state. This subcommittee will also assist in developing the requisite language needed in each state to accomplish this goal as it is recognized that each state's law may vary in terms of what amendments may be necessary. It is also recognized that the changes needed to be made to guaranty fund laws to address divisions may be different from those changes that are needed to address IBTs. The Public Policy Committee Chair will provide updates on the progress of this effort to the Board at each NCIGF Board meeting. NCIGF staff is instructed to provide the necessary support to the subcommittee.